IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6071 of 2005
To
SPECIAL CIVIL APPLICATION No. 6090 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BROACH TEXTILE MILLS LTD THROUGH BIPINKUMAR V HINGU - Petitioner(s)

Versus

GOPALSING JODHASING - Respondent(s)

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Appearance :
MR HRIDAY BUCH for Petitioner – MILL COMPANY.

MR P.H.PATHAK For Respondent for workmen.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH
Date : 25/07/2005

ORAL JUDGMENT

1. As the common questions of law and facts arise in this group of petitions, the same are being disposed of by this common judgment and order.

2. In this group of petitions, the common petitioner – Bharuch Textile Mills Limited has challenged the legality and validity of the judgment and orders passed by the Industrial Court No.3, Vadodara dated 27-9-04 passed in Appeals (IC) No. 16 / 2003 to 35 / 2003 in T-Application No.90 of 1990 and other T-Applications and also judgment and awards passed by the Labour Court, Bharuch dated 26.9.2003 passed in T.Application No.90 / 1990 and other 19 application, by which, both the Courts below have directed the petitioner – Mill Company to reinstate the concerned workmen with different percentage of backwages to those workmen who have not attained the age of superannuation and to pay backwages to those workmen and/or their heirs who have been either attained the age of superannuation or have died.

3. The concerned respondent workmen were serving with the petitioner mill company since many years. It appears from the record that those workmen were serving in Weaving Department and Weaving Department of the petitioner mill was closed down with effect from 24.10.1985. The Union raised industrial dispute by contending interalia that closing of the weaving department is illegal. The dispute was referred to the Industrial Court, Ahmedabad being Reference No.123 of

1985. It also appears from the record that in the aforesaid Reference, an application for interim relief was submitted by the Union to reinstate those workmen whose conduct is good and who gives an undertaking. It appears that thereafter there was lay off for the period from 1.1.1987 to 31.3.1987. Thereafter the concerned workmen came to be reinstated. It also appears from the record that after Weaving Department came to be closed with effect from 21.8.87, the petitioner mill company approached the Industrial and Financial Special Re-construction Board (BIFR) for declaring the Mill Company as sick industrial undertaking and the petitioner company started some of the departments and settlement came to be arrived at between the petitioner and Bharuch Textile Labour Union on 26.11.1988 as prescribed under Section-116(2) of the Act and the said settlement came to be registered on 2.12.1988. As per the said settlement, the workers were permitted to resign as per their desire within one month from the date of agreement / settlement and it was agreed to pay retiral dues to those workmen who opted for resignation within one month and it was also agreed that if any workman does not resign within one month from the date of settlement / agreement, the petitioner mill company will call them to resume the duties within 15 days from such communication directing them to resume the duties, and if concerned workmen do not report for duty, then in that case, it was to

be presumed that the concerned workman has deemed to have resigned and he was to be paid retiral benefits accordingly. It was the case of the petitioner mill company that so far as the concerned respondent workmen are concerned, they did not tender resignation and therefore, they were supposed to report for duty and as they did not report for duty within a fortnight, by notices dated 1.7.1989 the concerned workmen were called upon to inform the Mill Company within 4 days whether they are interested in doing the work which will be offered to them. It is the case of the petitioner mill company that as the concerned workmen did not report for duty and/or gave reply to the communication dated 1.7.1989 within 15 days from the date of receipt of communication dated 1.7.89, again, the petitioner company sent communication to the concerned workmen by communication dated 11.8.89 informing that as the concerned workmen had not reported for duty within 15 days as per the settlement, the concerned workmen are not interested in continuing with the job and therefore, the concerned workmen were informed that appropriate proceedings will be initiated as per the settlement dated 26.11.1988. On the other hand, it was the case of the concerned workmen that after receipt of the aforesaid communication dated 1.7.89, the concerned workmen did approach the Mill Company allowing them to report for duty but they were not

permitted to report for duties and the same was communicated to the Mill Company by representation / application dated 22.8.89 and 26.8.89 and inspite of that, the concerned workmen were not permitted to report for duties. Therefore, all the concerned workmen approached the Labour Court, Vadodara by way of T-Applications No.90 of 1990 and other 19 number of T.Applications under the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the “BIR Act” for short”), after sending the approach letters as required under Section-42(4) of the BIR Act. The aforesaid T-Application came to be opposed by the petitioner by raising following contentions.

[i] As in the approach letter as well as the statement of claim alleged termination is of 21.8.1987, considering the provisions of Section-42(4) of the BIR Act, the same is required to be done within a period of six months and as approach letters are dated 22.2.90 i.e after period of six months from 22.8.87, the same is barred by the limitation as contemplated under Section-42(4) of the Act ready with Rule-53(1) of the Rules.

[ii] As per the settlement entered into between the representative Union and the petitioner Mill Company, the

concerned workmen were either to submit resignation so that the retrenchment compensation and the retirement benefits can be paid or to report for duties within a period of 15 days and as the concerned workmen had not reported for duty within 15 days as per the settlement, it is to be presumed that the concerned workmen are not interested in job.

[iii] Even the concerned workmen did not report for duty within 15 days from the date of receipt of the communication dated 1.7.89, therefore also, the concerned workmen were required to be considered as having resigned as per the settlement dated 26.11.1988.

[iv] As per the settlement dated 26.11.1988, there was clause with regard to arbitration and therefore also, the application before the Labour Court is not maintainable.

4. On appreciation of evidence, the Labour Court held that the approach letter was within a period of six months from the cause of action as the concerned workmen were called upon to report for duty by communication dated 1.7.1989 and in fact, they went to resume the duty

but they were not permitted to resume duty and the Mill Company was informed with regard to the same by communications dated 22.8.89 and 26.8.89 which were not replied, though the same were received. Therefore, the Labour Court on appreciation of evidence held that the limitation starts from 22.8.89 / 26.8.89 and not from 21.8.1987 and therefore it was held by the Labour Court that the same is within six months as contemplated under Section 42(4) of the Act read with Rule-53 of the Rules. The Labour Court also on appreciation of evidence held that the petitioner company did not act as per the settlement entered into with the representing Union and that in fact, though demanded the copy of the agreement / settlement either was not given to the concerned workman and/or the concerned workmen were not informed with regard to to raise the dispute before the Arbitrator, the Labour Court by its judgment and award dated 26.9.2003 allowed the said T.Applications partly. However, considering the fact situation and considering the case of each workman individually passed the order granting backwages differently ranging from 30 % to 70 % and as in the mean time, some of the workmen attained age of superannuation, did not pass order with regard to reinstatement so far as those workmen are concerned but directed to pay backwages to them only. So far as, three T-Applications are concerned, the concerned workmen had expired and

therefore, the Labour Court passed order to pay backwages to the heirs of the workmen concerned.

5. Being aggrieved and dissatisfied with the judgment and award passed by the Labuor Court, Bharuch dated 26.9.2003 passed in aforesaid T.Applications No.90 of 1990 and other 19 applications, the petitioner mill company preferred appeals under Section-84 of the BIR Act being Appeals (IC) No.16 to 35 of 2003 and the Industrial Court, Vadodara by its judgment and orders dated 27.9.2004 dismissed all the appeals confirming the judgment and awards passed by the Labour Court, Bharuch passed in aforesaid T-Applications. Being aggrieved and dissatisfied with the said judgment and orders passed by the Industrial Court, Vadodara dated 27.9.2004 passed in Appeals Nos.16 to 35 of 2003 in dismissing the same and confirming the judgment and awards passed by the Labour Court, Bharuch passed in T.Applications No.90 / 95 and other 19 T-Applications, the petitioner mill company have preferred the present special civil applications under Articles 226 and 227 of the Constitution of India.

6. Heard learned advocate Shri H.C.Buch appearing on behalf of the petitioner mill company and Shri P.H.Pathak, learned advocate on

behalf of the respondent concerned workmen.

7. Shri H.C.Buch, learned advocate appearing on behalf of the petitioner mill company has raised the same contentions which were raised before the Labour Court as well as the Industrial Court, which are as under :

[i] As in the approach letter as well as the statement of claim alleged termination is of 21.8.1987, considering the provisions of Section-42(4) of the BIR Act, the same is required to be done within a period of six months and as approach letters are dated 22.2.90 i.e after period of six months from 22.8.1987, the same is barred by the limitation as contemplated under Section-42(4) of the Act ready with Rule-53(1) of the Rules.

[ii] As per the settlement entered into between the representative Union and the petitioner mill company, the concerned workmen were either to submit resignation so that the retrenchment compensation and the retirement benefits can be paid or to report for duties within a period of 15 days and as the concerned workmen had not reported for duty within 15 days as per the settlement, it is to be presumed that the concerned workmen are not interested in job and they are presumed to

have resigned.

[iii] Even the concerned workmen did not report for duty within 15 days from the date of receipt of the communication dated 1.7.89, therefore also, the concerned workmen were required to be considered to be not interested in job and presumed to have tendered resignations as per the settlement dated 26.11.1988.

[iv] As per the settlement dated 26.11.1988, there was clause with regard to arbitration and therefore also, the application before the Labour Court is not maintainable.

8. Shri Buch, learned advocate has submitted that both the Courts below have materially erred in holding that the dispute raised by the concerned workmen and the approach letter was within a period of limitation i.e within six months as contemplated under Section 42(4) read with Rule-53 of the Rules and that has resulted into miscarriage of justice and the same is contrary to the evidence on record. It is submitted that according to the concerned workmen, their alleged termination was dated 21.8.87 or even one year thereafter on 26.11.88 i.e the date of settlement or latest even 15 days after the receipt of the

letter dated 1.7.89 (by which the concerned workmen were directed to report on duty within a period of 15 days) and when the approach letter is dated 13.2.1990, the same cannot be said to be within a period of six months as contemplated under Section 42(4) of the Act read with Rule-53(1) of the Rules, and therefore, it is submitted that the Labour Court has materially erred in entertaining the T-Applications and ultimately passing the judgment and award in T-Applications which were time barred. It is also further submitted by Shri Buch, learned advocate for the petitioner that as per the settlement dated 26.11.1988 entered into between the representative Union and the management, the concerned workmen were either to submit resignation so that they can get all the retirement benefits and/or to report for duties within a period of 15 days , failing which, it was to be presumed that the concerned workman was not interested in reporting for duty. It is, therefore, submitted that when the concerned workmen did not report for duties within period of 15 days after 26.11.1988, the claim of the concerned workmen for duty was lost and therefore, both the Courts below have materially erred in directing the petitioner to reinstate the concerned workmen and / or to pay backwages. Alternatively, it is further submitted that at least from the date of receipt of communication / letter dated 1.7.89 the concerned workmen were required to report for duty within 15 days and as the

concerned workmen did not report for duty, the right in favour of the concerned workmen was lost as per the settlement dated 26.11.88 and therefore also, the Labour Court has materially erred in ordering the petitioner to reinstate the concerned workmen and / or to pay backwages. It is also further submitted that the Mill Company is already closed since November, 2004 and therefore, it is not possible to reinstate the concerned workmen. It is also further submitted that considering the Arbitration Clause under the settlement itself, instead of approaching the Labour Court under the BIR Act, the appropriate remedy for the concerned workmen was to approach the Arbitrator named in the settlement and the application preferred before the Labour Court was not maintainable at all in view of the arbitration clause and therefore also, it is submitted that the Labour Court has materially erred in entertaining the T-Applications and directing the petitioner to reinstate the concerned workmen and to pay backwages. For all above reasons, it is requested to allow the present special civil applications.

9. Per contra, Shri P.H.Pathak, learned advocate appearing on behalf of the concerned workmen has submitted that out of 19 concerned workmen, four have already died and six workmen have already reached age of superannuation. It is submitted that all the

concerned workmen were serving since 1972 and thereafter as per the settlement dated 26.11.1988 as the concerned workmen did not submit resignation as per Clause-4 of the settlement, the petitioner Mill Company was required to offer employment in the spinning, winding, warping and/ or Sizing departments by intimating to the concerned workmen by Registered A.D. Post and therefore, contention on behalf of the petitioner that if the concerned workman does not resign and in that case, within 15 days the concerned workmen were to report for duties and if they did not report within a period of 15 days, it is to be presumed that the concerned workmen is deemed to have resigned services voluntarily, cannot be accepted and it is only after the petitioner company offers the employment by intimating the concerned workmen by RPAD and after receipt of the said intimation within a period of 15 days, the concerned workmen did not report for work, in that case, it was to be presumed and construed that the concerned workmen is deemed to have resigned the services voluntarily. It is further submitted hat in fact, after receipt of the communication dated 1.7.89 immediately thereafter they had gone to report for duties, however, the concerned workmen were not permitted to report for duties and the Mill Company was informed by communication dated 22.8.89 and 26.8.89 and therefore, it cannot be said that the concerned workman had deemed to

have resigned voluntarily. It is further submitted that by Shri P.H.Pathak, learned advocate for the respondent workmen that both the Courts have concurrently held and found that the concerned workmen sent the approach letter within stipulated limitation i.e six months and the cause of action started from 22.8.89 / 26.8.89 the same is not required to be interfered with by this Court exercising the powers under Articles 226 and 227 of Constitution of India. It is therefore further submitted that on appreciation of evidence both the Courts below have concurrently held that none of the workmen can be said to have voluntarily resigned as they were not permitted to report for duties inspite of the settlement entered into between the representative Union and the management dated 26.11.1988, both the Courts below have rightly ordered to reinstate the all concerned workmen those who have not attained the age of superannuation and/or except those workmen who have died and further that both the courts below have rightly ordered to pay backwages ranging from 30 % to 70 %. It is further submitted that as the Labour Court has passed the order to pay different percentage of backwages to the concerned workman, which clearly shows that the labour court has considered the case of each workman individually with regard to backwages also and the same is confirmed by the Industrial Court and hence, the same is not required to be interfered with by this Court in the

petition under Article 226 and 227 of the Constitution of India. So far as the contention with regard to Arbitration Clause in the settlement is concerned, learned advocate Mr.Pathak has submitted that firstly none of the workmen were informed with regard to the arbitration clause in the settlement and that none of the concerned workmen were made aware with regard to the same, and therefore, in absence of the same, it cannot be said that the applications before the Labour Court were not maintainable. It is further submitted that even the Clause-10 which is with regard to arbitration clause, it is agreed that for implementation and/or interpreting the terms of this agreement, the dispute was required to be referred to the Arbitrator named in the said settlement and therefore, it is requested to dismiss all the petitions.

10. Heard learned advocates appearing on behalf of the parties.

11. It is not in dispute that as per the settlement entered into between the representing Union and the Management entered into under Section 116(2) of the BIR Act, it was agreed as under :

> “01. Within the fortnight of the signing of this modification Agreement the Company will resume gradually, the Spinning,

Winding, Warping and Sizing departments and all the said departments shall be worked on rationalised basis. The number of the employees to be employed category – wise in each of the departments is annexed hereto and marked Annexure-A. The members of the staff for working the aforesaid departments to be employed by the mills are shown in the statement annexed hereto, and marked Annexure-"B".

02. Since most of the employees working in weaving and processing departments have already resigned and have been paid their legal dues, their respective posts are hereby abolished.

03. Those of the permanent employees except those employed in the spinning, winding, warping and sizing departments, who desire to resign within one month will be paid gratuity as per the payment of gratuity Act on their resignation and their poss shall be deemed to be abolished.

04. If, any of the employees referred to in Clause-3 aforesaid does not resign within one month from the date of this agreement, he shall be offered employment by the Company in the

Spinning, Winding, Warping and/or Sizing departments by intimating to him by Regd.A.D. Post. If the employee concerned does not report for work as offered by the Mills Company within a fortnight thereafter he shall be deed to have resigned the services voluntarily and in that event the company shall pay to such employee gratuity as per the Payment of Gratuity Act, earned due leave with wages and pro-rate bonus if payable.

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10. If any dispute arises in implementing and/or interpreting the terms of this agreement the same shall be referred to the Arbitration of Shri D.C.Gandhi, Advocate and Shri R.M.Shukla whose decision shall be final and binding."

12. The said settlement was dated 26.11.1988. Considering the terms of the settlement, it was open for the concerned workmen to resign within one month and on tendering the resignation, they were required to be paid the retirement benefits as per Clause-04 of the settlement. However, Clause-4 provides that if any of the employees referred to in Clause-3 does not resign within one month from the date of this agreement, he was required to be offered employment by the Mills Company in Spinning, Winding, Warping and / or Sizing departments by

intimating to him by Regd. A.D.Post and if the employee concerned does not report for the work as offered by the Mills Company within a fortnight, thereafter, he shall be deemed to have resigned the services voluntarily and in that event, the company was required to pay such employee gratuity as per the Payment of Gratuity Act, earned due leave with wages and pro rata bonus if payable. Thus, Considering Clause-04, it does not provide that if within a period of one month the concerned workman does not resign, then in that case, within a period of 15 days thereafter he was to report for duties and on not reporting for the duties within period of 15 days, he shall be deemed to have been resigned services voluntarily. Considering Clause-4, it so provides that if the employee does not resign within one month fro the date of agreement i.e 26.11.1988, he was required to be offered employment by the company in the spinning, winding, warping and / or sizing departments by intimating to him by Registered A.D.Post and if the employee concerned does not report for work as offered by the mills company within a fortnight thereafter, he shall have deemed to have been resigned services voluntarily. Therefore, contention on behalf of the petitioner that 15 days to be counted from completion of one month on and from 26.11.1988 cannot be accepted. Therefore, contention of the petitioner that cause of action starts from 26.8.1987 or 15 days from 26.11.1988

cannot be accepted. It transpires from the record that the concerned workman came to be communicated and informed by the notices dated 1.7.1989 to give their consent whether they are ready to accept the work offered by the company at any Department within a period of 15 days of receipt of such communication. It also appears from the record that such communication came to be received by the concerned workmen between 17.7.1989 to 25.7.1989. It is the case of the respondent concerned workmen that in fact, on receipt of said communication dated 1.7.1989, they in fact went to report for duties immediately but they were not permitted to report for duties and thereafter also, there were correspondence between the concerned workmen and the Mill Company such as communications dated 22.8.1989 and 26.8.1989 in which complaint was made by the concerned workmen that they were not permitted to resume duties. The receipt of the communication dated 22.8.1989 and 26.8.89 by which the concerned workmen made complaint that they are not permitted to report / resume the duty, is also admitted by the petitioner company in the evidence. It also emerges from the record and evidence that there was no reply by the petitioner company to the communication dated 22.8.89 and 26.8.1989. Therefore, considering the above fact, the Labour Court on appreciation of aforesaid facts came to the conclusion that the cause of action for

submitting the approach letter as required under Section-42 of the BIR Act is required to be considered from 28.8.1989 and as the approach letters are dated 13.2.1990, the same was within the period of six months and therefore, it was within the period of limitation as contemplated under Section-42 of the BIR Act. The Industrial Court also in appeal confirmed the said finding. This is finding of fact arrived at by both the Courts below concurrently on appreciation of evidence and therefore, the same is not required to be interfered with by this Court in a petition under Articles 226 and 227 of the Constitution of India. Even otherwise, considering the evidence on record and considering the fact that communications dated 22.8.89 and 26.8.89 were not replied by the petitioner company by which it was requested by the concerned workmen to allow to resume duties as per the settlement dated 26.11.1988, it is rightly held by the both the courts below that cause of action would be from 22.8.1989 / 26.8.89 and as the approach letter is dated 13.2.90, the same is within a period of limitation i.e within period of six months. The contention of the petitioner company to consider the cause of action with effect from 21.8.87 also cannot be accepted as thereafter settlement was entered into under Section-116(2) of the BIR Act and the parties were required to act as per the same. Therefore, the contention on behalf of the petitioner to consider the cause of action

from 21.8.87 cannot be accepted. Similarly, the contention on behalf of the petitioner mill company to consider the cause of action from 26.11.1988 i.e from the date of settlement also cannot be accepted for the simple reason that the parties were to act as per the terms and conditions arrived at in the settlement and therefore, the cause of action from 26.11.1988 cannot be accepted. Therefore, the contention of the petitioner company that approach letters and filing of application before the Labour Court under BIR Act were time barred, cannot be accepted and has no force and substance at all. Under the circumstances, it is held that the approach letters as well as applications submitted by the concerned workmen were within the period of limitation.

13. So far as the contention on behalf of the petitioner company with regard to the arbitration clause is concerned, both the courts below have concurrently held that none of the workmen were specifically informed with regard to the arbitration clause and therefore, said arbitration clause will bar the concerned workmen to approach the Labour Court and to approach the Arbitrator named in the settlement cannot be accepted. Even considering the arbitration clause i.e Clause-10, it is mainly with regard to implementing and interpreting the terms of the agreement and the same will not be barred approaching the appropriate industrial forum

by the concerned workmen. As stated above, the aforesaid submission was not seriously pressed into service and the main submission was with regard to submitting the approach letter beyond the period of limitation and/or the concerned workmen not having reported for duties within period of 15 days, they are deemed to have resigned from services voluntarily.

14. So far as the question of backwages is concerned, it is required to be noted that the concerned workmen were serving with the petitioner mill company since 1972 and out of 19 workmen, 4 workmen have already expired and 6 workmen have already attained age of superannuation and the Labuor Court has passed the order directing the petitioner to pay backwages till attaining the age of superannuation and/or till the concerned workmen had expired. Even considering individual case the Labour Court has awarded the different percentage of backwages to different workmen considering the individual case and has passed the order to pay backwages ranging from 30 % to 70 %. However, it is also required to be noted that the petitioner company was before the BIFR and as such, actually closed since November, 2004 and the backwages would be from 1987 i.e 30 % to 70 % of approximately of 10 to 13 years. Therefore, considering the facts and circumstances of

the case if the order passed by the Labour Court is modified to the extent that the concerned workmen are paid backwages to an extent of 50 % of what is awarded by the Labour Court, it will be in the fitness of the things and the same will meet the ends of justice in the fact situation and aforesaid facts.

15. For the reasons stated above, the petitions succeed partly with regard to backwages only. It is ordered that the concerned workmen will be entitled to 50 % of backwages awarded by the Labour Court to each of the respective concerned workmen, meaning thereby, if the Labour Court has awarded 30 % of the backwages, the concerned workman will be entitled to 15 % of the backwages and so on, if the concerned workman is awarded 70 % of the backwages, he will be entitled to 35 % of the backwages. Rest of the judgment and awards passed by the Labour Court confirmed by the Industrial Court are upheld and confirmed accordingly. The petitioner Mill Company is directed to pay backwages and the arrears along with the cost as ordered by the Labour Court within a period of three months from the date of receipt of this order.

16. Rule is made absolute in each of the matter to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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